

No. 9(1) 81-6Lab./13359.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s. Haryana Roadways, Karnal.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD.

Reference No. 422/80.

between

SHRI RADHEY SHYAM, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S. HARYANA ROADWAYS, KARNAL.

Workman in person with his representative Shri Om Parkash.

Shri S. N. Gaur, for the respondent-management.

AWARD

This reference No. 422 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana.—*vide* his order No. ID/KNL/84-80/46574, dated 3rd September, 1980 under section 10(i) (c) of the Industrial Disputes Act, 1947, existing between Shri Radhey Shyam, workman and the management of M/s. Haryana Roadways, Karnal. The term of the reference was:—

"Whether the termination of services of Shri Radhey Shyam was justified and in order? If not, to what relief is he entitled?"

On receiving this reference, notices were issued to the parties and parties filed their pleadings, on the date fixed. The case of the claimant is that he was appointed from 12th December, 1972 as Store-keeper-cum-Store Clerk at Bus Stand, Panipat. The Junior Auditor, Haryana Roadways, Karnal made complaint against the claimant on 25th July, 1978 and 1st August, 1978 alleging that the stock register does not tally with the consumption register and that twenty naya paise were found short while totalling the day book. On this complaint the charge-sheet was issued and enquiry was held against the claimant and the Enquiry Officer held that two charges at 'ka' and 'Kha' are proved and no other charges are proved. After this enquiry, a show cause notice was issued to the claimant and after show cause notice, the final termination order was passed by the authority.

The claimant had explained that the respondent had never alleged that the claimant had himself misappropriated or embezzled any amount of the Government. The Punishing Authority had pointed out some mistake in totalling of the day book and stock available does not tally with the consumption register which were objected by the junior auditor. He further stated in his demand notice that these were small objection by the auditor which could have been removed had the claimant given an opportunity to remove the same. He further stated that the Punishing Authority has not applied his mind to facts of the case before passing these orders. The respondent had not mentioned in his show cause notice that the wrong was done intentionally and by doing so he has achieved wrongful gain and caused wrongful loss to the department. In the absence of these things, the alleged mis-conduct against the workman is not proved. The report made by the Junior Auditor that the ledger and consumption register regarding sugar and tea did not tally, is wrong because the Auditor did not physically verify the stock at the spot. He further stated that there was no complaint against him of the public or by any officer. The Junior Auditor intentionally to harass and harm checked the register and so it is false report. The order made by the authority based on the false report is not legal orders.

The respondent in his written statement has admitted that the claimant was working at Bus Stand, Panipat from 12th December, 1972, but alleged that the claimant was irregular in maintaining the record of the restaurant which was reported by the Junior Auditor. They further admitted that there are two charges 'ka' and 'kha' of charge No. 1 were proved while charge No. 'ga' and two were not proved against the claimant. Further alleged that the claimant was unable to maintain the record properly and he cannot be retained in the service in public interest and the punishing authority has rightly ordered. The charge against the claimant was that the daily consumption register did not tally in figure as mentioned in charge 'ka' and 'kha'. So the applicant had committed the mistake for which he has been punished. They further stated that the misappropriation is not only mis-conduct for public interest.

On the pleadings of the both parties, the issues as per reference was struck out:—

"Whether the termination of services of the workman is proper, justified and in order? If not to what relief is he entitled?"

After framing this issue, the management filed the enquiry file from page 1 to 92 and one oral evidence of Shri Dharam Singh, Clerk, Haryana Roadways, Karnal and closed his case. The workman came as his own witness as WW-1 and closed his case.

My findings on issue is as under:—

Both the parties filed their written arguments. According to the respondent, the claimant was posted as Store-keeper-cum-Store Clerk at Haryana Roadways Restaurant at Panipat. Shri Nand Lal Bhatia, Junior Auditor posted at Panipat made a report against the applicant that stock register does not tally with the consumption register and twenty naye paise were found short while totalling the day book. The claimant claimed that the mistake in totalling the day book does not amount to embezzlement or misappropriation and the order of termination is bad in law on the grounds that the complainant was biased and prejudiced against the applicant who did not exercise the physical verification of the stock at the time of making report against the claimant. The applicant was not supplied with the list of witnesses and copies of documents along with the charge-sheet or contention of the applicant are totally false and without any basis against the record approved on the file. The applicant had admitted in his cross examination that the applicant is responsible as Store Clerk for maintaining the stock register and consumption register of Restaurant at Bus Stand, Panipat and he was duty bound to maintain the official records under his custody diligently. They have admitted in his written argument to fact that there was no charge-sheet of embezzlement or misappropriation against the applicant and the charge against him was that he did not maintain the records properly which was on the file during course of departmental enquiry. It is established on the file that the stock register did not tally with the daily consumption register. According to their written argument they have stated that it is admittedly proved on the file that the applicant failed to calculate the exact figure of day book for 20 naye paise was deposited short in the bank which was deposited on the next day on the indication of the restaurant manager. They further stated in his written argument that a regular departmental enquiry was held into the charge levelled against him and he was given full opportunity to defend himself. The Punishing Authority was

not at all prejudiced or biased against the applicant as alleged. The Punishing Authority, agreed with the finding of the enquiry officer, a copy of which was also supplied along with show-cause notice. The respondent further written in the argument that the contention of the applicant that the charges levelled against him are vague and totally baseless and there was clear and definite charges against him. There was no charge against the applicant that he achieved wrongful gain and caused wrongful loss to the department. There was no necessity to mention like that in the summary of allegations. The applicant was found guilty of the charges that he did not maintain the records properly and dereliction and non-performance of duties is a misconduct on the part of a public servant. The allegation of the applicant is that Shri Nand Lal Bhatia, Junior Auditor was prejudiced or biased against him is baseless. The Junior Auditor posted at Headquarter is supposed to check the account book and audit the same even from any complaint from any side. The claimant was supplied with the copies of documents relied upon and list of witnesses along with the charge-sheet which he has admitted during his cross-examination. The claimant has not mentioned in his demand notice that the proper procedure was not adopted and he was not given the opportunity to defend himself and respondent further written in his written argument that the claimant is governed by the Punjab Civil Services (Punishment and Appeal) Rules, 1952. The Supreme Court as well as our own High Court have held time and again that the duty of the Court is to see, as to what illegality has been committed while passing the impugned order. The Court is not to go into the merits of the case and the quantum of punishment, otherwise would amount to seating in judgement over the departmental authorities.

According to the written argument from the claimant, he was appointed as Store-keeper-cum-Store Clerk from 12th December, 1972 and posted at Haryana Roadways Bus Stand Restaurant, Panipat. He received the charge-sheet from General Manager, Haryana Roadways, Gurgaon on the basis of the complaint made by the Junior Auditor, dated 25th July, 1978 and 1st August, 1978. After the reply of the charge-sheet Shri S. N. Gour, Legal Adviser was appointed as Enquiry Officer who submitted the enquiry report and according to that report charges 'A' and 'B' were approved. Charge 'A'

is that the petitioner did not deposit the amount of 20 naye paise in the bank on 25th July, 1978, but it was deposited on the next day. Charge 'B' is that there was a charge against the petitioner that the stock ledger and consumption register did not tally with each other. The claimant further written in his written argument that there was no cutting on the cash book and in this way, no criminal intention can be attached with the conduct of the petitioner. At charge 'B' the claimant alleged that the enquiry officer did not retain the stock ledger and consumption register in order to prove that they do not tally with each other. The contention of the petitioner is that there is no consumption register is maintained at the Restaurant. So the charge framed is basically wrong. He further written that the witness of the respondent Shri Dharam Singh had admitted that the enquiry officer had not summoned the consumption register at the time of holding enquiry. Thus in the absence of consumption register this allegation cannot be established against the petitioner because the enquiry officer cannot tally the stock ledger and the consumption register in order to find out the shortage as alleged in the charge-sheet. He further stated in his written argument that the Punishing Authority had not applied his mind properly to facts of the present case. The Punishing Authority did not mention in the show-cause notice of proposed punishment that the enquiry officer has not been established. This fact clearly shows that the Punishing Authority has not gone through the report of the enquiry officer and so he has not applied his mind at the time serving the show-cause notice of proposed punishment which amounts to denial of reasonable opportunity. He has referred the citation 1972 (2) S.L.R., Assam and Nagaland page 62. On this point he further argued in his written argument that the Punishing Authority was required to furnish his own findings along with the show-cause notice of proposed punishment and if he was disagreed with the finding of the enquiry officer. The petitioner has denied the reasonable opportunity of defence by withholding the copy of finding of the report of the Punishing Authority in case he was not in agreement with the enquiry officer. The authority cited A.I.R., 1966 S.C., 1827. He further argued in his written argument that the petitioner had been sending the statement of stock to the higher authority. The competent authority must have file recovery against the petitioner had there been any shortage of stock. There was no *mala fide* levelled against the petitioner. The service record of the

petitioner remained good and unblended throughout tenure of his service. In view of the above dismissal of the petitioner had been passed on account of personal prejudice and bias. The gravity of the punishment is higher than the nature of the misconduct if it is set to have been proved against the petitioner.

After going through the whole record and going through the argument given by the parties, I am of the view that the order passed by the authority is not good. The starting point of this case is a complaint of junior auditor, dated 1st August, 1978. The Junior Auditor checked the day book of the Restaurant on 25th July, 1978 which was written by Shri Radhe Shyam in which he has mentioned that there is mistake in totalling the day book. By this mistake he has deposited twenty naye paise less in the bank and on the next day on the asking of the restaurant manager he deposited the same in the bank. On the same day he has checked the stock ledger and consumption register. He found that it is not properly maintained because on the same date the consumption is higher than the stock register and on the same days it is less consumed than showing in the stock register. The statement attached with this report show that from 5th July, 1978 to 13th July, 1978, the claimant has shown 700 gram more tea consumed in the stock register and from 3rd July, 1978 to 29th July, 1978 the difference between the stock register and consumption register is 2 Kg. 500 gram sugar consumed more according to the stock register. In the consumption register it is shown seven kilo sugar consumed whereas in the stock register it is shown 9 Kg. 500 gram sugar consumed. On this basis, the enquiry was held and enquiry officer was appointed after giving the charge-sheet to the claimant. The enquiry officer hold the enquiry on 18th December, 1978 and recorded the statement of Shri Nand Lal. Junior Auditor who has stated in his statement that he checked the day book on 25th July, 1978 found that the twenty naye paise was less deposited in the bank which was deposited on the next day. He further stated that he has checked the consumption register and stock register and found the discrepancies as mentioned above. In cross-examination he has admitted that he has not physically verified the stock in hand because he thinks that there was no necessity to do it, and on the next date the enquiry officer again hold the enquiry in which Shri Lokh Nath, Assistant Cashier Restaurant came as witness on behalf of the management and stated that he was holding

the charge of the manager of the restaurant on 11th August, 1978. The claimant Shri Radhey Shyam was posted as salesman on cold booth and he sold only four cold drinks from 9.00 a.m. till evening but he did not receive any complaint from the public from this stall that he was not present there and he has not sold cold drinks. He further stated before the enquiry officer that he took over the charge of the claimant. After his suspension he did not hand over the charge to me. I alone physically verify the stock and found the following discrepancies in the actual stock and stock register. At this stage on the objection of the claimant the enquiry was adjourned to 21st December, 1978 as the witness is stating all these things without the register. On 21st December, 1978, the respondent cross-examined the witness Shri Lok Nath. In his cross-examination he has stated that the claimant used to go in the market for the purchase. He further stated that the store lock has two keys one of them used to be with the witness of Shri Lok Nath and other with the claimant Shri Radhey Shyam. He stated that he did not know whether the kitchen workers used to go for taking the goods from the store even in the absence of the Shri Radhey Shyam. He further stated that Shri Radhey Shyam was holding two jobs as store-keeper and salesman of the cold booth. He further admitted in the cross-examination that on 28th August, 1978, two kilograms sugar, one kilogram ghee and 100 grams tea were issued by Shri Radhey Shyam on the indent, which were not shown in the stock register and the same were not got less in the physically verification and store ledger. He has further admitted that he has not called the junior auditor and S.S. at the time of physically verification. He has further admitted that the duty of writing the day book is of the counter clerk and not of Shri Radhe Shyam. The statement of Shri Radhe Shyam was also recorded on the same day and he closed his enquiry on the same saw. On the basis of the above statement the enquiry officer prepared his report and proved the allegation 'A' against the claimant. The finding of the enquiry officer in view of the above statement is wrong because the claimant does not know how to write the day book not he was duty bound to write this according to the statement of Shri Lok Nath. Counter Clerk is to write the day book daily. On the day the claimant wrote this day book the counter clerk was on leave and so he has to write the day book to complete the work of this restaurant, but he has not supposed

to know the writing of the day book which is very technical work and without training one cannot do the same as there was no bad intention of the claimant as shown in the statement of the witness and charge-sheet. There can be small mistake of totalling by such person who has no knowledge for his performance and the claimant deposited the same on next day on finding the mistake by the manager of the restaurant. So it is not case of embezzlement or misappropriation which is admitted by the respondent in his written argument. It was a simple mistake and not a gravious charge against the claimant. The enquiry officer has not given and appreciated the evidence before him and gave wrong findings.

On the next charge 'B' which is deed of entries in the consumption register and stock register. On this charge the junior auditor has failed to do his duty when he found that there is some difference in the consumption register and stock register. He should have physically verified the stock at spot to come to the conclusion of the mistake. He has stated in the report that there is mistake in the entries of consumption register and stock register. As some days the consumption is less than stock register and some days the consumption is more than stock register and difference is very nominal as shown in the statement given with the report of the junior auditor. He has shown seven hundred grams tea more in the stock register while comparing the entries with the consumption register from 3rd July, 1978 to 18th July, 1978 in the 14 days and sugar from 3rd July, 1978 to 29th July, 1978 only two kg. 500 grams in the 27 days entry which is very minor thing in the absence of premises run by the Haryana Roadways and by the Government Officer.

The respondent has failed to produce the record before me to show the discrepancies. The representative of the management has not even got exhibited the enquiry report or the imaged order in the enquiry. They have simply produced the enquiry file in the Court and got examined one witness MW-1 Shri Dharam Singh clerk of the Roadways to prove this enquiry. The respondent Roadways should have produced the enquiry officer which is not done. I feel that the punishment given to the workman is more than his fault. These minor things which could be removed by issuing him censure and other minor punishment because the workman as admitted

by the respondent, is working from 12th December, 1979 and there is no complaint or explanation for his misconduct in the previous tenure of his service. It shows that it was mistake without any bad intention which could be removed by any other means and not by terminating the services of an old employee. One citation Indian Factories Journal, Volume 57, 1980, Page 320 of the Punjab and Haryana High Court in Case Bhajan Singh, v. State of Punjab and others where the Lordship had held as under:—

Though previously and Industrial Tribunal had no power to interfere with an order of punishment issued by an employer after a proper and valid domestic enquiry, after the enactment of section 11-A of the Industrial Disputes Act, 1947, the Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence established the misconduct alleged against the workman. Ultimately it may hold that the misconduct itself is not proved or that the misconduct does not warrant the punishment of dismissal or discharge.

The gravity of the punishment is higher than the nature of misconduct if any against the workman. So the orders of the punishing authority is not proper according to the enquiry and the allegations. The workman is entitled his reinstatement with full back wages from the date of termination. No order as to costs. This may be read an answer of this reference. Dated, the 28th October, 1981.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Endorsement No. 3076, dated 2nd November, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947, with the request that the receipt of the above said award may please be acknowledge within week's time.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

No. 9(1)81-6Lab/13360.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Jawala Textile Mills, Gurgaon.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD.

Reference No. 77 of 1980.

between

SHRI GURDIAL, WORKMAN AND THE
RESPONDENT MANAGEMENT OF M/S
JAWALA TEXTILE MILL, GURGAON.

Shri S. K. Goswami, for the workman.
Shri M. Dias, for the management.

AWARD

This reference No. 77 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID|GGN|72-79/9462, dated 12th February, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the disputes existing between Shri Gurdial and the respondent management of M/s. Jawala Textile Mill, Gurgaon. The term of the reference was :—

Whether the termination of services of Shri Gurdial was justified and in order ? If not, to what relief is he entitled ?

On receiving this reference, notices were issued to the parties and parties filed their pleadings.

The case of the workman is that he joined services of the respondent in the year 1975 as permanent piecer at the salary of Rs. 320 per month. After got sanction the leave from 23rd October, 1979 to 31st October, 1979 he went home. There he fell ill and sent an application with medical certificate for extension of leave for 1st November, 1979 to 13th November, 1979 and after recovery of health on 13th November, 1979, he came in the factory on 14th November, 1979, with the fitness certificate. The respondent took the fitness certificate and asked the workman to come on duty on the next day. In this way he daily visited the factory up to 20th November, 1979 and on that day the respondent flatly refused to take the workman on

duty and the workman submitted his demand notice on the same day. According to the workman the termination is due to victimization as he was president of the union of the factory.

The case of the respondent according to the written statement is that there is no industrial disputes regarding this workman as there is no termination of services of the workman. The workman is abandoned his services voluntarily by absenting himself from the duty from 24th October, 1979. Further that workman was not permanent employee of the respondent. He was a badli workman on the basis of daily wages for Rs. 12 per day. The workman went home with one day leave i.e. 23rd October, 1979 but did not report on 24th October, 1979 onwards. Thus the workman was absent from duty without obtaining leave or permission since 24th October, 1979. The management waited upto 10th November but did not receive any intimation from the workman. In these circumstances, the management wrote a registered letter dated 10th October, 1979, informing the workman that he has lost his lien as he has absented himself from the duty without obtaining any leave or permission. The workman did not come into the factory till 29th November, 1979. The question of victimization due to the alleged trade union activities did not arise. So the claimant is not entitled to any relief. The work of the workman was not satisfactory.

On the pleadings of the parties, following issues were framed :—

- (i) Whether the workman has abandoned his services on his own accord as absented from duty more than stipulated period and voluntarily abandoned his services ?
- (ii) Whether the termination of the services of the workman is proper justified and in order. If not, to what relief is he entitled ?
- (iii) Relief.

To prove the issues, the respondent produced a copy of the registered letter dated 10th November, 1979 Ex. M-1 addressed to the workman, Ex. M-1/1, a copy of the postal receipt, Ex. M-2, a copy of the standing order of the factory, Ex. M-3, a copy of attendance register July, August, September, and November, 1979. Ex. M-4, copy of the unpaid wages for the month of November, 1979 and one oral witness of Shri K. R. Bhardwaj, General Manager of the

respondent company as MW-1 and Shri M. P. Singh, snat recharge MW2 and closed his case. The workman produced his three oral witnesses WW-1, Shri Chet Ram, Ex-Time Keeper of the respondent factory and Shri Rameshwar as WW-2, workman in the respondent factory and workman came as his own witnesses as WW-3 and closed his case.

My findings on issues is as under :—

The representative of the management argued that the workman went home with one day leave and after that he did not return on his duty within stipulated period which he provided in the standing order Ex. M-2 Para II-G of the standing order which are adopted by the respondent factory and after waiting upto 10th November, the name of the workman was struck off from the roll of the company due to his absent according to our standing orders so the workman has abandoned his services voluntarily and it is not case of termination. The learned representative though produced so many reference in support of his argument but same are not according to the circumstance of the case. I have gone through the books referred by the representative of the management but the circumstances of this case is not matching with the present references. The representative of the management further argued that he was a Badli workman appointed in the year 1975 and not of a permanent employee of the factory so he has lost his lien automatically according to our standing orders Ex. M-2. He drew my attention towards Ex. M-3. The Ex. M-3 is a copy of the attendance register from July, 7 to November, 1979, in which the date of appointment of the workman is written as 6th September, 1975 as piecer as badli worker. The word as badli is written on the top of the attendance register in the month of August, 1979. In the page of October, 1979 of Ex. M-3, it is very clear that there is cutting and overwriting on the attendance register. It is very clear that from 24 to 31, the respondent has made L to A. It shows that the workman was marked on leave and after thought he has marked as absent which creates the doubt in the mind why the respondent has done so. The representative of the management denied this fact, but it is very clear. The representative of the management stressed in his argument that there is no industrial dispute in this respect and there are ruling of different high court on this point. The representative of the workman argued that the claimant was a president of the factory union

and he raised the dispute regarding payment of bonus on Diwali Festival and there was strike in the factory on this issue which was settled between the parties and the management agreed to pay something in lieu of the bonus. It is admitted fact that the workman was the president of the factory's union as admitted by the WW-1 and WW-2. He further argued that after Diwali holidays, the workman went home after got sanctioning the leave from 23rd December, 1979 to 31st October, 1979 and he fell ill on that day and he sent an application for extension of leave with Medical Certificate which was received by the management but did not enter in any register and when the workman came after recovery from health to resume his duty with fitness certificate. The respondent took fitness certificate and asked him to come on next day. In this way the respondent linger on the matter upto 20th November, 1979 and on that day they refused flatly to take the workman on duty and so the workman gave the demand notice on the same day i.e. 20th November, 1979. He argued that the witnesses of the respondent MW-1 General Manager of factory came in the witness boxes and stated that the workman went home with one day leave i.e. 23rd November, 1979 and after that he did not return on duty. In his cross-examination he has denied that he has not brought the sanctioned leave application with him today. The representative of the workman argued that the respondent management did not bring this application because it was sanctioned application upto 31st October, 1979 and not for one day. If he brought it today everything will be on the table and clear that they have concealed it due to this fact. The witness again denied the suggestion that the management did not write any letter to the workman for his absence or never asked to resume his duty because they wanted to get rid of him and the workman was on leave. Further witness of the respondent MW-2 Shri M. P. Singh, who is shift incharge of the factory also states in his statement that he sanctioned one day leave to the workman but deny the suggestion that he has not brought the record of leave as he was not incharge of that section. MW-2 accept the sanction of leave for one day but it is written that it was one day sanction leave. It was sanctioned leave upto 31st October, 1979 as supported by WW-1 Shri Chet Ram, Ex-Time Keeper of the respondent factory. The witness was timekeeper at the time when the workman left for home on

this sanctioned leave. He stated in his statement that he received two application of the workman which were entered in the register and sent to the concerned department. He further stated that he also received an application for extension of leave with medical certificate which was sent to the concerned department because without sanctioning we cannot enter. He joined the service one-and-half year back and seen the working of the workman. He stated in his statement that the work of the workman was satisfactory and he was a president of the union of the factory and respondent want to get rid of this workman. He has denied the suggestion of the representative of the management that the workman was a badli worker. He has stated in his cross-examination that the shift incharge used to sanction the leave for the workman. He could sanction upto one month leave. He stated in his cross-examination that he received an application of the workman and entered in the register. He has also stated in his cross-examination that there was strike before Diwali holidays on account of bonus of the workman which was settled between the parties. It was due to the workman that other workmen get bonus at the festival of Dewali. He further argued that witness WW-2 of workman of the respondent factory who has also supported the same that Shri Gurdial was a permanent employee. He was a president of the workmen's union of the respondent factory and there was strike before the Diwali holiday in respect of bonus which was settled between the parties. The respondent gave the bonus to the workman. The workman has also stated in his statement of this fact which are true. When the workman is victimised due to the union activities which is made loss of the factory for the payment of bonus and other benefit to the workmen for which this workman was responsible because he was the president of the union. The termination of the services is made only due to this fact that the respondent want to get rid of this workman so the workman was not absent from duty but he was on leave and the respondent has arbitrary struck off the name from the roll as regards badli worker. The representative of the workman has argued that it is admitted fact that the workman was appointed on 6th September, 1975 as piecer in the factory which is clear from the Ex. M-3. How the workman can put a badli worker for lost of lien and if he was badli worker then what was need to go with sanction leave. Badli worker is only

to substitute the other workman when they are on leave or not present in the factory. Shri Gurdial was permanent employee of the factory and not badli worker. The respondent has failed to prove that he was badli worker and they have also failed to prove that he was absent from duty and when their time-keeper who was on duty at the time of going on leave states that he got entered the leave application in the register. The record of the respondent is not in hand of the workman which can be produced in the Court. The respondent has withhold the record which could prove that the workman was on leave. The workman has produced a duplicate copies of the certificate of witness which is very clear that he was ill from 1st November, 1979 to 13th November, 1979 and the respondent knowingly refused the workman to take on duty. After going through the file and hearing the arguments of both parties, I am of the view that the argument of the workman has some force because the management has withhold the certain documents which were essential to come to the conclusion on the right way. It is admitted fact that there was sanctioned leave. They should have produced it in the Court but it was one day sanctioned leave and not upto 31st October, 1979. The matter will be cleared on the production. Further there is cutting and overwriting on the attendance register for the month of October, 1979. It is very clear that the respondent had made 'A' from word 'L' which creates doubt in the mind that why the respondent has done so. It is only to conceal the fact that the workman was on leave up to 31st October, 1979 and after that he has sent medical certificate and application for extension of leave as admitted by then timekeeper at the respondent factory which was not rebutted by any documents and oral evidence so this issue is decided in favour of the workman and against the respondent management.

ISSUE No. 2 :

Issue No. 2 is as per reference. After discussing the issue number one, I feel that there is no necessity to discuss any more when it has been decided that the workman has not abandoned his service voluntarily. It means that the services of the workman were terminated by the respondent is illegal without any reason which is wrong in the eye of law. So the workman is entitled for his reinstatement with continuity of services and with full back wages.

No order as costs. This may be read an answer of this reference.

Dated : 29th October, 1981.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endst. No. 3077, dated 2nd November, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour & Employments Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947 with the request that the receipt of the above said award may please be acknowledged within week's time.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1) 81-6 Lab./13361.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s. The Bangal National Textile Mills Ltd., 14/15 Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD.

Reference No. 439 of 1980.

between

SHRI SANT LAL SINGH AND THE RE-
PONDENT MANAGEMENT OF M/S. THE BENGAL
NATIONAL TEXTILE MILLS LTD., 14/15,
MATHURA ROAD, FARIDABAD.

Shri R. C. Sharma, for the management.

Shri Yoginder Singh, for the workman.

AWARD

This reference No. 439 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/149-80/49053, dated 15th September, 1980 under section 10(i) (c) of the Industrial Disputes Act, 1947 existing between Shri Sant Lal Singh workman and the respondent management of M/s. The Bengal National Textile Mills Ltd., 14/5 Mathura

Road, Faridabad. The term of the reference was:—

Whether the termination of services of Shri Sant Lal Singh was justified and in order? If not, to what relief is he entitled?

On receiving this reference, the notices were issued to the parties and parties appeared and filed their pleadings. The case of the claimant according to his demand notice and rejoinder is that he was appointed on 5th June, 1970 in the respondent factory. From 24th January, 1979 to 23rd February, 1979 he went on leave and after that he was seriously ill and was under-going treatment in the Government Dispensary. The claimant wrote a letter for the extension of leave which was duly granted. The claimant was fit for duty by 22nd August, 1979 and reported on duty on 23rd August, 1979 along with fitness certificate from the Medical Officer, Government Dispensary. The respondent evaded to take the claimant on duty by one pretext or another for a long time, the claimant used to report daily on the gate of factory. The claimant gave an application for the same on 29th June, 1980, but no reply was received. Finally he filed a demand notice on 26th June, 1980. The refusal of management to take the claimant on duty after giving full explanation and the reasons of his absence which was highly pressing is illegal and *mala fide*.

The case of the respondent according to his written statement is that the reference is bad as there is no industrial disputes as it is neither, discharge, dismissal, retrenchment or otherwise termination of services so the reference is bad in law. The claimant was sanctioned the leave for the period for 24th January, 1979 to 23rd February, 1979 subject to the class of 14-C of the Certified Standing Order of the company which is as under:—

In the event of a workman remaining absent in excess of the period of leave originally granted or subsequently extended, he shall lose his lien on his appointment unless:

- (1) He returns within ten (10) days in case of permanent workman and five days in case of other workman of the expiry of the period of leave originally granted or subsequently extended and
- (2) Gives an explanation to the satisfaction of the Manager of his inability to return on the period of the leave period.

No explanation shall however be entertained after the time fixed above.

Shri Sant Lal Singh, then submitted the Medical Certificate for the period 24th February, 1974, for three weeks ending 15th March, 1979. Leave was sanctioned but he was advised the inability of the respondent for granting the further extension of leave,—vide his letter, dated 26th February, 1979 after 16th March, 1979. He shall lose his lien on his appointment unless he returned within 10 days of period of leave i.e., by 25th March, 1979. The claimant neither sent any communication nor reported on duty by 25th March, 1979 and he further lost lien on his appointment with effect from 26th March, 1979 and thus voluntarily abandoned his services and his name was struck from the roll of the factory from the same date on 26th March, 1979. The letter to the effect was also sent to him, dated 26th March, 1979. So the case does not covered under section 2(A) of the Industrial Disputes Act, 1947 after lapse of about five months. The claimant approached the management for resuming his duty which the management did not allow him in accordance with clause 11-G of the Certified Standing Order of the company which read as under:—

"A workman who absents himself without leave for 10 consecutive days in case of a permanent workman and five consecutive days in case of temporary workman will be deemed to have left the service of the company without notice, thereby terminating his employment automatically. In case the workman offers himself for duty on the 11th day (in case of permanent workman) and 6th day (in case of a temporary workman) or earlier day and also explains the reasons of his absence to the satisfaction of the Manager, the absence may be converted into leave without pay and may also be posted to similar or any other job carrying the same pay. If, however, the workman does not so present and submits his explanation within the time mentioned above, he will not be eligible to be excused even though he may have been ill or for any other reason whatsoever."

It is not first instance of the workman, he behaved in the same way previously. He went on leave for seven days from 14th December, 1973 and did not resume duty on 22nd December, 1973 no intimation received from him. He overstayed his period of leave and voluntarily abandoned his services and lost his lien and his

name was struck from the roll but on the unconditional apology from the workman on 23rd April, 1974. The management warned him that if at any time in future such instance is repeated, the management will not allow him to resume duty. The workman again behaved in the same way but this time the management is not ready to accept the workman because he behaved in the same way.

On the pleadings of the parties, the following issues were framed:—

➤ (i) Whether it is a case of voluntarily abandonment of service as the workman absented himself without information from duty? If so, to what effect?

(ii) As per reference.

(iii) Relief.

According to the order, dated 10th February, 1981, the issue No. 1 shall be treated as preliminary issue and decided first. My findings on issue No. 1 is as under:—

ISSUE No. 1.

The respondent management produced three oral witness MW-1, Shri Ram Sanahi, Time Assistant of the Factory, MW-2, Shri V. K. Akhori, Personnel Manager, MW-3 Shri Vijay Kumar, Time Office Clerk and produced documents M-1, a copy of attendance register showing the workman in the attendance register, Ex. M-2 a copy of the letter, dated 26th February, 1979 addressed to the workman at his home address, Ex. M-3 a copy of letter, dated 26th March, 1979 by which they have informed the workman that no further extension will be granted and if he failed to come in time according to the certified standing order your services will be terminated as if you have no lien on appointment. The representative of the management argued that the workman went home for one month and after that they received a letter for extension of leave for three weeks which was sanctioned and wrote a letter Ex. M-2, dated 26th February, 1979 for giving information that your leave has been extended up to 15th March, 1979. After that did not receive any letter or information from the workman, Respondent wrote another letter Ex. M-3, dated 26th March, 1979 explaining the position of the respondent after his absence and even after that the respondent received no communication from the workman till 23rd August, 1979. When the workman came to the respondent to join his duty after lapse of seven or eight months, according to the standing orders Ex. M-6 para 11-G, the services of the

workman had been terminated and the workman did not show any reasons of his absence to the satisfaction of the respondent. He argued that the certificate in original which are Ex. M-1 and W-2 and W-3 produced in the Court they never sent to the respondent by any means. The Court could see that these are the original certificate. The workman in his rejoinder has stated that he got treatment in the Government Dispensary where as the certificate put on the file of the Court are not from the Government Hospital. They are from Private Doctor thus the certificates have been got prepared by the workman after thought otherwise he was not ill at his home because he has not sent us any communication after first letter for which the respondent replied on 26th February 1979 when the respondent has accepted one medical certificate which sent to him by the post then there was no agitation to accept the other. In fact after this certificate, he has not sent any certificates. He argued that the statement of WW-1, Shri Mohan Lal cannot be relied upon because he has come as witness as he was General Secretary of the union and he has to help the workman in all conditions and he has deposed falsely because Ex. W-2 and W-3 are not photostet copy whereas the witness has stated that Ex. W-2 and W-3 are the copy of the photograph which was done by the workman himself. In fact Ex. W-2 and W-3 are not copies of the photostat they are original certificates submitted by the workman in the Court as he has not submitted the same to the respondent. He has referred 1981 Labour Industrial Cases pages 106 in which it is held that if the workman remained sick or ill leave more than six months. It is not a case of retrenchment. He has further referred 1957-58 L.L.J., page 226 and 260 of the Supreme Court in which their Lordship has held that there is no necessity of issuing the Charge-sheet when the workman is absent from duty for such a long time. The representative did not brought the book with him, he simply cited from the register.

The representative of the workman argued that it is admitted fact that the workman went after got sanctioning the leave up to 23rd February, 1979. After that the workman sent a letter with medical certificate for extension of leave for three weeks copy of which Ex. W-6 and Ex. M-7. The postal receipt for the registration of the letter. After that the workman sent medical certificates through his brother as stated by the witness WW-1, which he has submitted in the factory and given to the Personnel Officer and

submitted Ex. W-3 medical certificate through his brother to same witness who has further submitted the same to the respondent management. After recovering from the illness the workman came with fitness which is Ex. M-9 which was presented to the respondent but he refused to accept the workman and did not give the duty to the workman and it is not a case of self abandonment of service. He further argued that the workman was admitted as indoor patient of the Dispensary Hospital and Ex. W-2 and Ex. W-3 are the true copy of the certificate which was taken by the workman and sent the same to the respondent by hand. The workman did not receive any letter for striking off his name from the roll. After hearing the argument of the both parties and going through the reference of the file, I feel that the management has proved his case up to the mark. The respondent in his written statement has written about previous history of being absent for which the workman did not reply anything of that submission. In para No. 4 of the written statement, the respondent has written previous default of the same nature. If there was no truth for the same the workman had replied the same but when the workman is silent in reply in his rejoinder after the written statement. It shows that the workman is habitual in this matter. The argument of the management have some force to rely upon whereas the workman cannot rebutt the argument put by the representative of the management. The respondent has rightly refused to accept the workman on duty according to their Standing Orders. Standing orders are rules of conduct for the respondent management and they cannot go beyond that and they can act according to their provision. The respondent has acted within its jurisdiction of action and not beyond that if the workman did not come in time according to the rules of Standing orders to join his duty without any reasons. Thus the respondent has every right to terminate or to remove from his service. So issue No. 1 which is a preliminary issue goes in favour of the respondent management and against the workman.

ISSUE No. 2.

When issue number one has been decided in favour of the respondent management then there is no need to discuss issue number two which is as per reference. The workman is not entitled to any relief under the law. No order as to costs. This may be read an answer of this reference.

The 26th October, 1981.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 3078, dated 2nd November, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, required under section 15 of the Industrial Disputes Act, 1947 with the request that the receipt of the above said award may please be acknowledged within week's time.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)81-6Lab.13454.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal-1, Faridabad, in respect of the dispute between the workman and the management of M/s. United Engineering Enterprises, Sector-24, Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING
OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 183 of 1979

Between

SHRI SACHIDANAND SINGH, WORKMAN
AND THE MANAGEMENT OF M/S UNITED
ENGINEERING ENTERPRISES, SECTOR-24,
FARIDABAD.

Present :

Shri Yoginder Singh, for the workmen.
Shri R. C. Sharma, for the management.

AWARD

By order No. 76—79/25265, dated 13th June, 1979, the Governor of Haryana referred the following dispute between the management of M/s. United Engineering Enterprises, Sector-24, Faridabad and its workman Shri Sachidanand Singh, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Sachidanand Singh was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed:—

- (1) Whether termination of services of the workman is justified and in order ?
- (2) Whether the workman is gainfully employed ? If so, to what effect ?
- (3) Relief.

And the case was fixed for the evidence of the management who examined Shri L. N. Yadav, Enquiry Officer as MW-1. The workman examined himself as WW-1 and closed his case. Arguments were heard. I now give my finding issuewise :—

ISSUE NO. 2 :

The management did not lead any evidence on this issue, hence this issue is decided against the management.

ISSUE NO. 1 :

MW-1 stated that he held enquiry and his finding was Ex. M-1. In cross-examination he replied that he gave all facilities to the workman. The representative of the management tendered in evidence Ex. M-2 to M-22 and closed its case.

WW-1 stated that he joined service on 1st October, 1976. He did not receive chargesheet in 1978, but enquiry was held against him. He had sought permission to bring his representative in the enquiry. He had submitted documents Ex. W-1 to W-2 to the Enquiry Officer. He was not given facilities demanded by him. He participated in the enquiry. He further stated that his statement was not correctly recorded by the Enquiry Officer. He was not allowed to cross-examine witnesses. In cross-examination he replied that he produced Shri Din Mohammad, Shri Lal Mohan and Ram Sewak as his witnesses. He also made his own statement. He admitted that he received copies of enquiry proceedings. He admitted that he had received reply of his one letter but he did not receive reply of letter Ex. W-2. In which he had asked for the report of the Enquiry Officer. He admitted that he had submitted reply Ex. M-21 or letter Ex. M-20. He admitted having received letter Ex. M-22.

The learned representative for the management argued that the workman was charged for acts of assault and intimidation,—vide chargesheet Ex M-4. The matter was enquired through an enquiry in which the workman fully participated. He was afforded full opportunity in the enquiry. He received copies of

the enquiry and made his defence also. He also argued that the workman was given second show-cause notice and his service were terminated for his serious acts of misconduct. On the other hand learned representative for the workman argued that the enquiry was completed only on one day and not held in accordance with the principles of natural justice. He further argued that the workman was victimised for union activities because his Supervisor had an ill will against him. He also argued that the matter was reported to the police by the management the next day.

I have gone through the chargesheet and find that the workman assaulted his Supervisor when he was going on a cycle from the factory. The concerned workman way-laid him and caught hold of him from the neck and gave him beating. He was also threatened by him. The motive of the workman is stated in the sheet that the Supervisor had rebuked the workman during the duty hours as he had left the machine under charge of Shri Ram Sewak, an unskilled worker. As regards, the domestic enquiry it is admitted that the workman participated in the enquiry and signed the proceedings. In the enquiry statements of Shri Vidya Dhar Kung and Rajiv Kumar, complainants were recorded. The witnesses were cross-examined. The representative of the workman Shri Ram Avtar was present. The workman examined Shri Din Mohammad, Shri Lal Mohan and Shri Ram Sewak. In their statements the defence witnesses have denied the version of the management i.e. leaving the machine with the helper and also the allegation of assault etc. The Enquiry Officer believing the version of the management witnesses found the workman guilty. After going through the evidence, I do not find any reason for vitiating the enquiry as the finding is based on evidence. The management gave second show-cause notice Ex. M-20 which was replied by the workman,—vide Ex. M-21. The charge being grave and serious in nature there is no ground to interfere in the punishment given to the workman by the management, therefore, this issue is decided in favour of the management.

ISSUE NO. 3 :

The workman is not entitled to any relief.

While answering the reference, I give my award that the termination of services of the

workman was justified and in order. The workman is not entitled to any relief.

Dated : 22nd October, 1981.

M. C. BHARDWAJ,

Presiding Officer, Industrial
Tribunal, Haryana, Faridabad.

No. 994, dated 2nd November, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer, Industrial
Tribunal, Haryana, Faridabad.

No. 9(1)81-6Lab./13456.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s Bandhu Machinery, Pvt. Ltd., 1-A, Industrial Area, Gurgaon:—

BEFORE SHRI M. C. BHARDWAJ,
PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 288 of 1979

between

SHRI SIRI KISHAN MEHRA, WORK-
MAN AND THE MANAGEMENT OF
M/S BANDHU MACHINERY, PVT.
LTD., 1-A, INDUSTRIAL AREA,
GURGAON

Present:

Shri R. N. Roy for the workman.

Shri A. D. Kolhatkar for the manage-
ment.

AWARD

By order No. GG/40-79/41056, dated 18th September, 1979 the Governor of Haryana, referred the following dispute between the management of M/s Bandhu Machinery, Pvt. Ltd., 1-A, Industrial Area, Gurgaon, and its workman Shri Siri Kishan Mehra, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1)

of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of service of Shri Siri Kishan Mehra, was justified and in order? If not, to what relief is he entitled?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties following issues were framed on 6th December, 1979:—

- (1) Whether the termination of services of Shri Siri Kishan Mehra was justified and in order? If not, to what relief is he entitled?
- (2) Whether the workman is gainfully employed elsewhere? If so, to what effect?

And the case was fixed for the evidence of the management, who examined Shri A. D. Kalhatkar, Enquiry Officer, as MW-1, Shri Anant Dehadrai their Manager as MW-2 and Shri Ashok Sharma their Administrative Officer, MW-3 and closed its case. The workman examined himself as MW-1 and closed his case. Arguments were heard. Now I give my finding issueswise:—

ISSUE NO. 1:

MW-1 stated that he was Legal Adviser of the management. He was appointed Enquiry Officer. The workman was called for enquiry but he did not participate. He was again sent letter copy. Exhibit M-2 by registered A.D. post. A.D. receipt was Exhibit M-3. The workman did not attend on the date fixed 25th April, 1979. Another letter. Exhibit M-4 was sent to the workman for attending on 9th May, 1979. The workman did not appear even on that date. He held enquiry Exhibit M-5. Finding of the enquiry was Exhibit M-6. In cross-examination he stated that he had sent letter. Exhibit M-4 by registered post. He could not produce A.D. receipt. MW-2 stated that the workman was in service since 20th September, 1976. There were cases of theft of tools. The management decided in the Works Committee to search lockers of the workers. In the locker of the concerned workman tools were found in excess. A show-cause notice was issued to the workman. He was called to participate in the enquiry but he

did not so participate. He was dismissed after making him payment. In cross-examination he stated that both keys of the lockers remained with the workers. Locker of the concerned workman was opened in the presence of Works Committee members. Lockers were provided to the workmen for safety of tools. The locker was opened during working hours of the factory. Lockers of all the workmen were opened. He did not know if on that date the workman was on night duty. He also did not know if the workman was present at the time of opening of the locker. He admitted that complaint of tools theft was not placed on file. Tools were not stolen from store, but the report was from workers. He admitted that the lock of the box of the worker was broken. Lockers were inside the workshop. He further stated that the workman was paid full wages for suspension period according to the Standing Orders.

WW-1 stated that he was in the employment of the factory since 20th September, 1976. The workman had submitted charter of demands. He had signed the letter of authority. The management had asked the workman to sign for withdrawal of demands. He had refused to sign the same. He was then charge-sheeted. One key of the tool box remained with the management. The tools belonged to the company. There was no inventory of the tools. He was not present in the factory on 19th March, 1979 at 3-10 P.M. His duty started at mid night. He was not informed that his tool box would be checked. He attended the factory during suspension period but he was not informed about the domestic enquiry. In cross-examination he stated that claim statement was written by his representative. Demand notice regarding pay scales, uniforms, bonus, etc., was given through Mercantile Employees Union. He admitted that he received information about domestic enquiry but he was not allowed entry into the factory. He did not make a complaint about it.

The learned representative for the management argued that in case the enquiry was held to be proper the Tribunal had no jurisdiction to sit over the decision of the employer. On the

other hand the learned representative for the workman contended that the tool box was not opened in the presence of the workman. He also argued that there was no complaint from any other workman about his missing of tools.

I have gone through enquiry papers and find that the workman was issued letter, Exhibit M-2 and Exhibit M-4 by registered A.D. post. The workman has admitted the fact of the receipt of enquiry notice. As regards his contention that he was not allowed entry into the factory on the date fixed. He did not make any complaint to the management or other authorities in this behalf. Therefore, the Enquiry Officer was justified in proceeding against him ex parte. I have gone through the enquiry proceedings, Exhibit M-5 and find that the Enquiry Officer recorded the statement of Shri Anand Parshad, A. P. Srivastav, Shri Jeet Singh and Shri J. K. Hasija. Witnesses stated in the domestic enquiry that five tools were recovered from the box of the concerned workman which were not issued to him. The enquiry finding, I find is based on the evidence recorded during ex parte proceedings. I do not find any defect in the same.

As regards the nature of misconduct, I find that the excess items shown are as under:—

(1) Round file 6"	1 No.
(2) Allen Key 1/8"	1 No.
(3) Candle	1 No.
(4) M.S. Coller	4 No.
(5) Soapcake	3 No.

I repeat following paras from the finding Exhibit M-6 which is as under:—

All the witness opined that these items Shri S. K. Mehra must have kept with the intention of stealing and he must be wanting to take it out whenever he gets the chance.

The page No. 3 of the tool register of stores on which the Account of Shri S. K. Mehra is opened does not show that the above items were issued in name of Shri S. K. Mehra.

After carefully going through all the facts and statements made before the Enquiry Officer, he had no reason to disbelieve the evidence produced before him by the management and he had to conclude that the charges levelled against Shri S. K. Mehra are proved beyond doubt.

According to the charge-sheet, Exhibit M-1 misconduct is as under:—

“To keep extra tools in possession without knowledge of the management is a misconduct under Certified Standing Orders applicable to this unit as it amounts to attempt of theft”. According to the domestic enquiry finding the workman was held to be in possession of excess tools for intention of stealing. Intention and attempt are two distinct things. Intention is an act of mind whereas attempt is an overt act by the person. Intention cannot be gathered without subsequent overt act in furtherance of that bent of mind. There is no where in evidence that the concerned workman made any attempt to take tools mentioned in the charge-sheet out of factory, nor there is any evidence to show past record of the workman showing him involved in theft or attempt previously. I have gone through the Certified Standing Orders placed on the file by the management and find that major misconduct penalty for which is dismissal are given in clause 29(c). Attempt or theft is not included in the list. Whereas the charge proved by the Enquiry Officer was only an intention.

It would have been proper for the management to open tool box in the presence of the workman and find out the source of extra tools. There is no evidence to

prove that extra tools were never issued to the workman, the tools belong to some other workman or the management and there was a complaint of missing tools. In fact all tools belong to the management and are in its constructive possession. Tool box is provided for its safe custody and to save time for daily issue and deposit of the tools to the Store Incharge.

As held by me above that Mens-Rea is not an offence only. Theft or its attempt is an offence. Theft is dishonestly removal or moveable property from the possession of another. Removal of moveable property is the first ingredient of the offence and later on dishonestly is to be proved. All the ingredients are missing in this case. Thus I find that there was no cause to hold a domestic enquiry against the workman. The charge-sheet does not disclose any misconduct or cause of action. The dismissal order is capricious. I hold that it is illegal and unjustified. Therefore, this issue is decided against the management.

ISSUE NO. 2:

MW-2 stated that the concerned workman was working in Raghubir Machinery, Gurgaon. Prior to it he was working with Sunil Chadha of Mayapuri. In cross-examination he stated that he had not brought any record from Raghubir Machinery of Sunil Chadha of Mayapuri. He further replied that he did not know the period of work in these companies, nor knew about the wages. He also replied that he had not seen personally the workman working anywhere.

On this short evidence it cannot be presumed that the workman was gainfully employed. The management has failed to prove this issue by any cogent evidence. Therefore, this issue is also decided against the management.

While answering the reference, I give by award that the termination of services of the workman was neither justified, nor in order. The workman is entitled to reinstatement with continuity of service and with full back wages. I order accordingly.

✓The 25th October, 1981.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 998, dated 2nd November, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1) 81-6 Lab./13457.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Bandhu Machinery Pvt. Ltd., Industrial Area, Gurgaon.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING
OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.
Reference No. 293 of 1979.

between

SHRI PREM SHANKER, WORKMAN AND THE
MANAGEMENT OF M/S. BANDHU MACHINE-
RY PRIVATE LIMITED, 1-A INDUSTRIAL
AREA, GURGAON.

Present:

Shri R. N. Roy, for the workman.

Shri A. D. Kolhatkar, for the management.
AWARD

By order No. GG/43-79/41348, dated 20th September, 1979, the Governor of Haryana referred the following dispute between the management of M/s. Bandhu Machinery Private

Limited, 1-A, Industrial Area, Gurgaon, and its workman Shri Prem Shanker, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of the section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Prem Shanker was justified and in order? If not, to what relief is he entitled?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties issues were framed on 6th December, 1979:—

(1) Whether the termination of services of Shri Prem Shanker was justified and in order? If not, to what relief is he entitled?

(2) Whether the workman is gainfully employed elsewhere? If so, to what effect?

And the case was fixed for the evidence of the management, who examined Shri A. D. Kolhatkar as MW-1, Shri Ashok Sharma Administrative Officer as MW-2 and Shri Anant Dehadrai their Manager as MW-3. The workman examined himself as WW-1 and closed his case. Arguments were heard. Now, I give my finding issueswise.

ISSUE No. 1:

MW-1 stated that he was appointed Enquiry Officer,—vide Ex. M-1 to enquire into the charge-sheet Ex. M-2. The workman was asked to attend the enquiry proceedings on 25th April, 1979, but he did not attend. A registered letter Ex. M-3 was sent to him. Acknowledgment card of which was Ex. M-4. He was asked to appear on 9th May, 1979. The workman attended on that date. The workman was asked to cross-examine the witnesses but he did not cross-examine. The enquiry was completed, proceedings of which were Ex. M-5. He submitted his report Ex. M-6 to the management. In cross-examination he stated that the workman had not asked for any facility. He walked out of the enquiry of his own. MW-3, stated that the workman was working from 24th August, 1976 with this management. There was a complaint of theft of tools. Therefore, it was decided to search workers lockers. The concerned workman was given show cause notice. Domestic enquiry was held against him. Enquiry finding

was received and he was dismissed. In cross-examination he stated that both the keys of the locker remained with the workman. The locker was opened in the presence of works committee members. Lockers of all the workers were opened. He did not remember if the workman was on night duty on 21st March, 1979. He did not remember if he was present at the time of opening of the locker. He admitted that they have not filed complaint regarding tool theft. He admitted that the locker was opened by breaking the lock.

WW-1, stated that he was working in the factory for three years. A demand notice was given to the management. The management had asked the workers to sign a paper for withdrawal of the demand notice. He had refused to sign the same. In his tool box there were working tools and his uniforms. The tools belong to the company but the uniforms belong to him. He was on night duty. He was not informed about search of tool box. The management used to obtain signatures at the time of issue of tools. He was suspended. He was not allowed to associate in the enquiry. In cross-examination he stated that he did not remember if he had received intimation for domestic enquiry. He admitted his signatures on Ex. M-4. He also admitted information of enquiry and stated that he was not allowed entry into the factory, but he did not lodge any complaint about it.

The learned representative for the management argued that in case the enquiry was held to be proper the Tribunal had no jurisdiction to sit over the decision of the employer. On the other hand the learned representative for the workman contended that the tool box was not opened in the presence of the workman. He also argued that there was no complaint from any other workman about his missing of tools.

I have gone through enquiry papers and find that the workman was issued letter Ex. M-2 and M-3 by registered A.D. post. The workman has admitted the fact of the receipt of enquiry notice. As regards his contention that he was not allowed entry into the factory on the date fixed, he did not make any complaint to the management or other authorities in this behalf. Therefore, the Enquiry Officer was justified in proceeding against him *ex-parte*. I have gone through the enquiry proceedings Ex. M-5 and find that the Enquiry Officer recorded the statement of Shri Anant Dehadrai, Shri J. K. Hasija, Shri A. P. Srivastav and Shri Jeet Singh. Witnesses stated

in the domestic enquiry that tools were recovered from the box of the concerned workman which were not issued to him. The enquiry finding, I find is based on the evidence recorded during *ex-parte* proceedings. I do not find any defect in the same.

As regards the nature of misconduct, I find that the excess items shown are as under:—

- | | | |
|---------------------------|-----|-------------|
| 1. Flat file 6" | .. | 1 No. |
| 2. Triangular file 6" | ... | 1 No. |
| 3. Allen Key 1/8" | .. | 1 No. |
| 4. Tap set 1/8" BSW | .. | 1 piece. |
| 5. Centre-Drill 1/8" 5/16 | .. | 1 No. each. |
| 6. Pump of domestic stove | .. | 1 No. |
| 7. Pencil | .. | 1 No. |

I repeat the following paras from the finding Ex. M-6, which are as under:—

All the witnesses opined that these items Sh. Prem Shanker must have kept with the intention of stealing and he must be wanting to take it out whenever he gets the chance.

The page No. 11 of the Tool Register of stores on which the Account of Shri Prem Shanker is opened does not show that the above items were issued in the name of Shri Prem Shanker.

After carefully going through all the facts and statements made before the Enquiry Officer, he had no reasons to disbelieve the evidence produced before him by the management and he had to conclude that the charges levelled against Shri Prem Shanker are proved beyond doubt.

According to the charge-sheet Ex. M-2 misconduct is as under:—

"To keep extra tools in possession without knowledge of the management is a misconduct under Certified Standing Orders, applicable to this unit as it amounts to attempt of theft".

According to the domestic enquiry finding the workman was held to be in possession of excess tools of intention of stealing. Intention and attempt are two distinct things. Intention is an act of mind whereas attempt is an overt act by the person. Intention cannot be gathered

without subsequent overt act in furtherance of that bent of mind. There is no where in evidence that the concerned workman made any attempt to take tools mentioned in the charge-sheet out of factory, nor there is any evidence to show past record of the workman showing him involved in theft or attempt previously. I have gone through the Certified Standing Orders placed on the file by the management and find that major misconduct penalty for which is dismissal are given in clause 29(c). Attempt of theft is not included in the list. Whereas the charge proved by the Enquiry Officer was only an intention.

It would have been proper for the management to open tool box in the presence of the workman and find out the source of extra tools. There is no evidence to prove that extra tools were never issued to the workman, the tools belong to some other workman or the management and there was a complaint of missing tools. In fact all tools belong to the management and are in its constructive possession. Tool box is provided for its safe custody and to save time for daily issue and deposit of the tools to the Store Incharge.

As held by me above that Mens-Rea is not an offence. Theft or its attempt is an offence. Theft is dishonestly removal of moveable property from the possession of another. Removal of moveable property is the first ingredient of the offence and later on dishonesty is to be proved. All the ingredients are missing in this case. Thus I find that there was no cause to hold a domestic enquiry against the workman. The charge-sheet does not disclose any misconduct or cause of action. The dismissal order is capricious. I hold that it is illegal and unjustified. Therefore, this issue is decided against the management.

ISSUE No. 2:

The management examined Shri Ashok Sharma MW-8 who stated that the concerned

workman was doing work in M/s. Laxmi Engineering, Mehrauli Road, Gurgaon. He was working there since 1st August, 1979. He produced certified copy Ex. MW-2 1. In cross-examination he stated that he did not know the full name of the workman.

I have gone through the certificate which states that Shri Prem Shanker Chohan was working in his factory as a turner since 1st August, 1979. Site of the works is shown Mehrauli Road, Gurgaon. Only by this evidence proof of gainful employment cannot be accepted. It would have been proper if the management produced some other evidence from the alleged new employer who could have recognised the concerned workman and also proved the amount of wages drawn by the workman during that employment. There may be other workman named Shri Prem Shanker. Even the names in the reference and certificate Ex. MW-2/1 are not identical. Therefore, this issue is decided against the management.

While answering the reference, I give my award that the termination of services of the workman concerned was neither justified, nor in order. The workman is entitled to reinstatement with continuity of service and with full back wages. I order accordingly.

The 25th October, 1981.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

Enodrsment No. 999, dated 2nd November, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

The 28th January, 1982

No. 9(1)82-6Lab. 275.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Khadi Ashram, G. T. Road, Panipat (ii) Khadi Ashram Ooni Utpati Kendra, Rajputana Bazar, Panipat.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA FARIDABAD

Reference No. 240 of 1981

between

SHRIMATI SITA DEVI, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S KHADI ASHRAM, G. T. ROAD, PANIPAT. (ii) KHADI ASHRAM OONI UTPATI KENDRA, RAJPUTANA BAZAR, PANIPAT

Shri Karan Singh, for the workman.

Shri S. Kaushal, for the respondent-management.

AWARD

This reference No. 240 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/KNL/86/81/45915, dated 8th September, 1981 under Section 10 (i) (c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shrimati Sita Devi, workman and the management of M/s Khadi Ashram, G. T. Road, Panipat. (ii) Khadi Ashram Ooni Utpati Kendra, Rajputana Bazar, Panipat. The term of the reference was: —

Whether the termination of services of Shrimati Sita Devi was justified and in order?
If not, to what relief is she entitled?

After receiving, this reference, notices were sent to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, issues were framed on 17th November, 1981. On 15th December, 1981 the case was fixed for the evidence of the management, when the representative of the management made a statement in this Court that the lady workman had settled her case with the management and also received a sum of Rs. 525/ in full and final settlement of all her claims or dispute including the right of re-instatement or re-employment. The photo copy of settlement is Exhibit M—1 and receipt of voucher is Exhibit M—2. He further stated that there is no dispute between the parties. This statement was duly admitted by the representative of the workman. In view of the above statement of the parties, I hold that there is no dispute between the parties according to the settlement Exhibit M—1. I give my award accordingly. No orders as to costs.

Dated the 1st January, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Endst. No. 5, dated the 4th January, 1982

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947, with the request that the receipt of the above said award may please be acknowledged within week's time.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

H. L. GUGNANI,
Commissioner and Secretary to Government, Haryana,
Labour and Employment Department.

FINANCE DEPARTMENT
DIRECTORATE OF LOTTERIES
CHANDIGARH

The 13th February, 1982

No. DOL/SOS/82/11495.—The 93rd Draw of Haryana Janta Lottery held at Chandigarh on 13th February, 1982 was conducted in the presence of the following judges :—

1. Mrs. Savita Tayal,
W/o Mr. M. L. Tayal, IAS,
Addl. Director Industries,
69/16-A, Chandigarh.
2. Mrs. Shashi Kumar,
W/o Mr. S. Kumar, I.P.S.,
624, Sector 16, Chandigarh.
3. Mrs. Santosh Kumar Gupta,
W/o Mr. B. B. Lal Gupta, HF & AS,
267/22-A, Chandigarh.
4. Mrs. Kamlesh Singla,
W/o Mr. B. R. Singla, HF & AS,
429/22A, Chandigarh.
5. Mr. Sandeep Kumar,
236/15A, Chandigarh.

GIAN CHAND,
Director of Lotteries and Joint
Secretary to Government, Haryana,
Finance Department,
Chandigarh.